

Thomas L. Hutchinson, OSB #994896

E-mail: tom.hutchinson@bullivant.com

BULLIVANT HOUSER BAILEY PC

One SW Columbia Street, Suite 800

Portland, Oregon 97204-4022

Telephone: 503.228.6351

Facsimile: 503.295.0915

Attorneys for Defendant Pension Trust Fund for
Operating Engineers

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

CYNTHIA ANN SHEPPARD,

Plaintiff,

v.

PENSION TRUST FUND FOR
OPERATING ENGINEERS,

Defendant.

Civil No.: 1:20-cv-01147

**NOTICE OF REMOVAL TO FEDERAL
COURT**

**Jackson County Circuit Court
No. 20CV18112**

Pursuant to 28 USC § 1441

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT, DISTRICT
OF OREGON:

PLEASE TAKE NOTICE that Defendant Pension Trust Fund for Operating
Engineers ("Pension Trust Fund") hereby removes to this Court the state court action
described below.

Bullivant|Houser|Bailey PC

One SW Columbia Street, Suite 800
Portland, Oregon 97204-4022
Telephone: 503.228.6351

NOTICE OF REMOVAL TO FEDERAL COURT

Page 1

I. PROCEDURAL POSTURE – STATE COURT ACTION

1. This is a civil action commenced in the Circuit Court for the State of Oregon for the County of Jackson, Case No. 20CV18112, entitled *Cynthia Ann Sheppard v. Pension Trust Fund for Operating Engineers*.

2. Service of the initial Petition for Declaratory Relief was made on Defendant Pension Trust Fund on June 19, 2020.

3. The following constitutes all of the process, pleadings and orders served upon Pension Trust Fund in this action: Summons and Petition for Declaratory Relief, copies of which are set forth as Exhibit A attached hereto and incorporated herein as part of this notice of removal.

4. On June 27, 2020, Plaintiff filed an Amended Petition for Declaratory Relief (“Amended Petition”) in the state court action. A copy of the Amended Petition is attached hereto as Exhibit B. Defendant has not been served with the Amended Petition. A copy of the court docket is attached hereto as Exhibit C.

5. This removal is timely in accordance with 28 U.S.C. §1446(b). Defendant Pension Trust Fund may remove within 30 days after receipt of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. 28 U.S.C. §1446(b).

6. Plaintiff’s Amended Petition asserts a claim by Plaintiff Cynthia Ann Sheppard for survivor pension benefits of decedent Robert D. Sheppard, Jr., a participant under the Pension Trust Fund. Plaintiff asserts she made a formal application to the Pension Trust Fund for death benefits, and the death benefits were denied. Plaintiff thereafter

appealed the denial of the death benefits. Once the appeal was denied, Plaintiff brought forth this action.

7. Plaintiff's claim premised on denial or termination of survivor pension benefits must be brought under ERISA, 29 USC § 1132(a)(1).

II. STATEMENT OF APPLICABLE LAW – JURISDICTION

8. Based upon the filing of the Amended Petition, this action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1331, and is one which may be removed to this Court by Defendant Pension Trust Fund under 28 U.S.C. §1441. The claim for survivor pension benefits against the Pension Trust Fund derive from the fact that the decedent, Robert D. Sheppard, Jr., was a pensioner under the Pension Trust Fund, a multiemployer defined benefit pension plan governed by the Employee Retirement Income Security Act of 1974("ERISA"), 29 U.S.C. §§1001, et seq., controlled by the Pension Trust Fund. See ERISA §502(a) and generally *Ingersoll-Rand Co. v. McClendon*, 488 U.S. 133, 140 (1990); *Farr v. U.S. West, Inc.*, 815 F. Supp. 1360, 1363-64 (D. OR 1992); *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004) (quoting *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65–66 (1987)).

The claim against the Pension Trust Fund necessarily involve issues of federal ERISA preemption because no independent legal duty on the part of the Pension Trust Fund is alleged in the Amended Petition that is not preempted by ERISA.

9. This is a civil action of which this Court has original federal question jurisdiction pursuant to 29 USC § 1001 *et seq.* (ERISA) and 28 USC § 1331. Pension Trust

Fund is entitled to remove this ERISA governed-action to this Court pursuant to 28 USC § 1441(b).

10. Venue is proper in the U.S. District for the District of Oregon, Medford Division, in that this action was filed in the Jackson County Circuit Court. LR 3-2(a)(4).

11. The Notice of Removal of civil action is filed with this Court within 30 days after service on Defendant of the initial Petition in the above-entitled action.

WHEREFORE, Defendant Pension Trust Fund prays that the above-entitled action be removed from the Circuit Court of Jackson County.

DATED: July 16, 2020

BULLIVANT HOUSER BAILEY PC

By /s/ Thomas L. Hutchinson
Thomas L. Hutchinson, OSB #994896
Telephone: 503.228.6351
Attorneys for Defendant Pension Trust Fund
for Operating Engineers

4826-4400-5315.1